

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTT A. HODES, ATTORNEY AT LAW)
P.O. Box 42002)
Washington, D.C.,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES DEPARTMENT)
HOUSING AND URBAN)
DEVELOPMENT)
451 7TH ST., S.W.)
Washington, D.C. 20410,)
)
Defendant.)

Case number:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1). This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, challenging the United States Department of Housing and Urban Development’s (“HUD”) denial of certain records contained in the Ginnie Mae Unclaimed Funds System (“UFS”).

2.) This case seeks declaratory relief that defendant HUD is in violation of the FOIA for failing to adequately respond to plaintiff’s FOIA request, by failing to release records the agency is in possession of, and are not exempt from the FOIA. This case also seeks injunctive relief that defendant immediately and fully comply with plaintiff’s FOIA request.

JURISDICTION

3.) This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

4.) Plaintiff Scott A. Hodes, Attorney at Law is an attorney licensed in the District of Columbia and Maryland. As part of his legal practice, plaintiff makes FOIA requests on behalf of clients. Plaintiff seeks the UFS information on behalf of an unnamed client.

5.) Defendant HUD is a cabinet-level agency of the executive branch of the U.S. government and has possession and control of records plaintiff seeks. The Government National Mortgage Association (“Ginnie Mae”) is a component of HUD. The Office of General Counsel is a component of HUD and is the HUD Office responsible for the FOIA decisions in this matter.

FACTUAL BACKGROUND

6.) Defendant HUD is the responsible government agency for the Government National Mortgage Association (“Ginnie Mae”). HUD through Ginnie Mae buys mortgages from financial institutions that make loans, group the mortgages into pools and then sells unit shares in these pools to investors. These are known as Ginnie Mae bonds or Ginnie Mae pass-through securities (“bonds”).

7.) In some instances, when making payments on these bonds, Ginnie Mae may not be able to locate the bond investors. When this occurs, Ginnie Mae puts the payments in its Unclaimed Funds Systems Accounts and maintains a database of the UFS. This database contains information concerning unclaimed dividends, including but not limited to, payee names, dollar amounts owed, check numbers, check issue dates and payee addresses.

THE FOIA REQUEST

8.) By letter to Mr. Richard Washington, Acting Assistant General Counsel, HUD, plaintiff sent via facsimile dated December 14, 2004, a request pursuant to the FOIA seeking “a copy of the payee’s names, dollar amounts, check numbers, issue dates and payee addresses contained in the Ginnie Mae Unclaimed Funds System (UFS).”

9.) By letter dated December 23, 2004, Holly K. Salamido, (“Ms. Salamido”) Assistant General Counsel, Freedom of Information, Office of General Counsel, HUD, acknowledged plaintiff’s FOIA request. Ms. Salamido notified plaintiff that his request had been assigned FOIA Control No. FI-416811 and that HUD estimated that “that it may take 90 days to complete processing of your request.”

10.) By letter dated April 18, 2005, received by plaintiff on June 7, 2005, Ms. Salamido denied plaintiff’s request on behalf of defendant. Initially, Ms. Salamido stated that “[a] search of Headquarters’ records by knowledgeable staff failed to locate any documents at HUD Headquarters that would be responsive to your request.” However, she went on to additionally state that “your request is denied pursuant to FOIA Exemptions 4 and 6.”

11.) By letter dated June 8, 2005, plaintiff administratively appealed HUD’s denial to the Assistant General Counsel for Procurement and Administrative Law. Plaintiff appealed both the search for responsive records and the denial of records, which HUD had indicated did not exist. Plaintiff stated at length that the records, if they existed, are not exempt in full pursuant to FOIA Exemptions 4 and 6.

12.) By letter dated March 17, 2006, HUD Deputy General Counsel George L. Weidenfeller acknowledged that responsive records did exist. However, Mr.

Weidenfeller affirmed HUD's withholding of responsive records pursuant to FOIA Exemptions 4 and 6.

13.) By letter dated April 4, 2006, plaintiff sought further information concerning the HUD appeal decision. Plaintiff asked who the submitters of information that was denied pursuant to Exemption 4 were, if they are investors in Ginnie Mae Mortgages or other entities and what the process is that this withheld information was submitted to HUD.

14.) By letter dated June 23, 2006, Mr. Weidenfeller responded to plaintiff's letter of April 4, 2006 on behalf of HUD. Mr. Weidenfeller stated that "[p]ersonal information relating to individual payees of mortgage-backed security dividend was withheld based on FOIA Exemption 6 because these payees have a privacy interest in not releasing personally identifying information to FOIA requesters. In your letter, you seek clarification on whether the 'submitters' of the withheld information are individual investors or corporate investors. As stated in the FOIA Appeal determination, information identifiable to specific individual investors was withheld. Additionally, you ask whether these 'submitters' are 'investors in Ginnie Mae mortgages or other entities.' They are investors in Ginnie Mae mortgage-backed securities."

PLAINTIFF'S CLAIM FOR RELIEF:
VIOLATIONS OF FOIA

15.) Plaintiff realleges and incorporates by reference all preceding paragraphs.

16.) Plaintiff is entitled by law to access the records requested under the FOIA.

17.) Defendant HUD is in violation of the FOIA, 5 U.S.C. § 552, by failing to fully and lawfully fulfill Plaintiff's FOIA request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- (1). Declare that Defendant has violated the FOIA by failing to satisfy Plaintiff's FOIA request of December 14, 2004;
- (2) Order Defendant to immediately search for and release all records responsive to Plaintiff's FOIA request;
- (3) Award Plaintiff his costs and reasonable attorney fees and litigation costs in this action; and
- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

/S/

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Attorney for Plaintiff